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No. 80-1811

In the Supreme Court of the United States

OCTOBER TERM, 1980

DAVID R. BENSON and JANICE M. BENSON,
PETITIONERS

v.

RAYMOND C. HIGHTOWER, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

LAWRENCE G. WALLACE
Acting Solicitor General

STUART E. SCHIFFER
Acting Assistant Attorney General

BARBARA L. HERWIG
KATHERINE S. GRUENHECK
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 633-2217

QUESTIONS PRESENTED

1. Whether the defense of qualified immunity available to federal officials in constitutional tort cases extends to a mistake of law.

2. Whether the district court correctly granted summary judgment for respondents on the ground that there were no genuine issues of material fact and respondents were entitled to judgment as a matter of law.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A9) is reported at 633 F.2d 869.

JURISDICTION

The judgment of the court of appeals was entered on December 8, 1980. A petition for rehearing was denied on January 28, 1981. The petition for a writ

of certiorari was filed on April 28, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

This constitutional tort suit grows out of an investigation by Customs Service agents that led to the arrest and prosecution of petitioners on charges of smuggling South African gold pieces into the United States.

Following dismissal of the criminal case,[1] petitioners initiated this civil damages action in the United States District Court for the Western District of Washington. Respondents, 12 Customs Service agents and their spouses, were named as defendants in their individual capacities. The four-count complaint alleged that the federal agents violated petitioners' Fourth Amendment rights in the following ways: (1) the search of petitioners' premises, resulting in the arrest of petitioners, was made pursuant to a search warrant that was issued by the magistrate without probable cause and was invalid on its face; (2) the search and seizure exceeded the scope of the warrant and constituted an unlawful general search conducted in an unreasonable manner; (3) petitioners were falsely arrested for violation of the smuggling laws (18 U.S.C. 542, 545); and (4) the con-

[1] The district court dismissed one count of the indictment on the ground that the South African Krugerrands alleged to have been smuggled were properly considered currency rather than gold metal and thus were not subject to declaration at the time of importation (Pet. App. A3). The other count of the indictment was voluntarily dismissed by the government (Pet. 9). Subsequent to the conclusion of the criminal proceeding, the Treasury Department issued a ruling that Krugerrands must be declared upon entry into the United States (Record on Appeal 84-85).

duct of the search involved a trespass upon a portion of the premises in petitioners' exclusive possession (Pet. App. B2-B3).

Respondents moved to dismiss the complaint for failure to state a claim or, in the alternative, for summary judgment. Among the bases for the motion was the defense of qualified immunity. In support thereof, respondents submitted the record from the related criminal prosecution, including the application for the search warrant, the search warrant issued by the magistrate, and affidavits from Customs Service agents explaining (1) that the Customs Service construes 18 U.S.C. 545 to treat South African Krugerrands as merchandise that must be declared upon entry into the United States, and (2) that petitioners, acting in suspicious circumstances, picked up from Customs Service officials two packages that contained 44 undeclared Krugerrands concealed within two wall plaques (Pet. App. A4 & n.3). Petitioners opposed this motion on the ground that, under the *Restatement (Second) of Torts* § 121, Comment i (1965) (quoted at Pet. App. A5-A6), the defense of qualified immunity was unavailable because the agents assertedly made an error of law in concluding that the Krugerrands were required to be declared pursuant to 18 U.S.C. 545.

The district court granted summary judgment for respondents on the first, third, and fourth causes of action (Pet. App. B1-B6). The court held that respondents "had established as a matter of law on uncontroverted facts the qualified immunity defense" (*id.* at A4). In particular, the district court found (1) "no factual dispute * * * that [respondents] acted with probable cause in conducting the search" pursuant to a warrant issued by a United States magistrate on the basis of probable cause, and (2)

that the agents arrested petitioners "based upon [the] U.S. Magistrate's initial finding of sufficient probable cause to conduct a search for 'evidence' * * * and upon the finding of said evidence in [petitioners'] possession * * *[, which established] as a matter of law * * * that the [agents] had probable cause to arrest [petitioners] for suspected violations of 18 U.S.C. 545" (*id.* at B4-B5). Thereafter, petitioners dropped Count II of their complaint alleging that the search had been conducted in an unreasonable manner (which the district court had found to present a contested issue of fact for trial (*id.* at B2-B3)), and appealed from the grant of summary judgment on the remaining three counts.

The court of appeals affirmed, holding that "[t]he record below amply supports the existence of both requirements [of the qualified immunity defense,][2] primarily the suspicious circumstances and conduct of [petitioners] and the imprimatur of the neutral, independent judicial officer in issuing the search warrant. These facts are not controverted" (Pet. App. A4). In addition, the court of appeals rejected petitioners' argument "that, as a matter of law, the qualified immunity defense based on reasonable grounds is not available where the law enforcement officials' mistake is a mistake of law. * * * [A] good faith mistake of law should be treated no differently than a mistake of fact. * * * [A] mistake of law of the kind involved here does not, *per se*, vitiate the qualified immunity defense" (*id.* at A4-A5, A7, A9).

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[2] The court of appeals stated that, for the defense of qualified immunity to be applicable, "[t]here must have existed, at the time and in light of all the circumstances, reasonable grounds that the action was appropriate and the officials must have acted in good faith" (Pet. App. A4).

ARGUMENT

1. The complaint in this litigation rests on the proposition that probable cause for a search warrant and arrest did not exist because the Customs Service agents made a mistake of law in believing that petitioners' Krugerrands were gold metal subject to declaration at the time of entry rather than currency subject to a subsequent declaration.[3] In this Court, petitioners principally contend (Pet. 14-22) that the court of appeals erred in holding "that there is no difference between a mistake of fact and a mistake of law for purposes of official immunity" (*id.* at 14) and "that a good faith mistake of law is an adequate defense [by a government official] to a private damage action for violation of constitutional rights" (*id.* at 16). In petitioners' view, the agents' mistake of law renders their actions unreasonable *per se* and deprives them of the defense of qualified official immunity to which they would otherwise be entitled.

This contention is without merit. Indeed, as this Court recently recognized, "[f]ederal officials will not be liable for mere mistakes in judgment, whether the mistake is one of fact or one of law." *Butz* v. *Economou*, 438 U.S. 478, 507 (1978). See also, *e.g.*, *Pierson* v. *Ray*, 386 U.S. 547, 557 (1967); *Wood* v. *Strickland*, 420 U.S. 308, 322 (1975); *O'Connor* v. *Donaldson*, 422 U.S. 563, 577 (1975); *Owen* v. *City of Independence*, 445 U.S. 622, 669 (1980) (Powell, J., dissenting). And, as demonstrated by the opinion below, the weight of authority is contrary

[3] The court of appeals "assume[d] without deciding that the agents and the magistrate were mistaken in concluding that Krugerrands are declarable items and that such a mistake was a mistake of law, rather than [a] mistake of fact" (Pet. App. A5 n.4).

to petitioners' claim. See, *e.g.*, *Midwest Growers Co-op Corp.* v. *Kirkemo*, 533 F.2d 455, 464 (9th Cir. 1976); *United States* v. *Barker*, 546 F.2d 940, 948 (D.C. Cir. 1976).[4]

In obtaining the warrant to search petitioners' premises, the agents followed the previously unchallenged interpretation of the Customs Service that 18 U.S.C. 545 applies to Krugerrands and other coins that are not customarily used as a medium of exchange in the foreign country and are primarily imported for their metal content. Furthermore, the agents informed the magistrate of the suspicious circumstances surrounding petitioners' acquisition of the packages in question, including the facts that the Krugerrands were not declared and were concealed in the backings of two wall plaques, that the coins were worth substantially more than the declared value of the plaques and that petitioner David R. Benson made a false declaration of the value of the plaques, that the packages were addressed to a fictitious person, and that petitioner David R. Benson first tried to claim the packages under an assumed name (Pet. App. A4 & n.3). Based on this application, the magistrate issued a search warrant on the ground that there was probable cause to believe that petitioners had violated the federal customs laws. And, following the search conducted pursuant to that warrant, the agents found further evidence to incriminate petitioners and thereupon

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[4] We also note, as the court of appeals pointed out (Pet. App. A6 n.5), that petitioners' argument based on the *Restatement (Second) of Torts*, *supra*, is limited by its terms to Count III of the complaint involving their warrantless arrest and does not apply to Counts I and IV concerning the search that occurred pursuant to the warrant issued by the magistrate.

arrested them. Both courts below concluded that the agents had acted reasonably in the investigation and arrest of petitioners. In these circumstances, petitioners' contention that the undeclared importation of the Krugerrands did not in fact violate 18 U.S.C. 545, even if a correct interpretation of the statute, does not serve to defeat the agents' defense of qualified immunity.

2. Petitioners also argue (Pet. 22-25) that summary judgment for respondents was inappropriate because of the existence of a genuine issue of material fact regarding whether the agents "reasonably believed that [petitioners] had committed a crime" (*id.* at 23). This fact-bound question, involving the application of settled legal principles to the particular circumstances of this case, does not warrant further review.

At all events, petitioners' argument is unfounded. As the district court noted (Pet. App. B3), petitioners did not allege that the agents "acted other than in good faith" but asserted only that they "acted without probable cause * * *." The court concluded that, contrary to Fed. R. Civ. P. 56(e), petitioners had submitted "[n]othing * * * which raises as a material issue of fact the question whether [the agents] acted without probable cause * * *," and that "[o]n this basis alone, then, summary judgment of dismissal would be appropriate * * *" (Pet. App. B4). Moreover, the court "[a]dditionally * * * [found] there can be no factual dispute * * * that the [agents] acted with probable cause * * *" because the magistrate "concluded that there was sufficient probable cause to issue the search warrant * * * [pursuant to which] the * * * agents acted in conducting their search" (*ibid.*) and because there was "as a matter of law * * * probable cause to arrest [petition-

ers] for suspected violations of 18 U.S.C. 545" (*id.* at B5). The court of appeals explicitly determined that, with respect to the dispositive issues and "primarily the suspicious circumstances and conduct of [petitioners] and the imprimatur of the neutral, independent judicial officer in issuing the search warrant," the material facts were "not controverted" (*id.* at A4). Petitioners' recitation of their allegations concerning the execution of the warrant does not bear on the reasonableness or propriety of the agents' actions challenged in Counts I, III, and IV of the complaint. Rather, these allegations relate only to the claim presented in Count II, which the district court did not resolve on respondents' motion for summary judgment and which petitioners voluntary dismissed. Accordingly, the courts below correctly held that the record presented no genuine issue of material fact and that respondents were entitled to judgment as a matter of law.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

LAWRENCE G. WALLACE
Acting Solicitor General

STUART E. SCHIFFER
Acting Assistant Attorney General

BARBARA L. HERWIG
KATHERINE S. GRUENHECK
Attorneys

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